IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.3739 OF 2005

IN

SUIT NO.3659 OF 2003

...

Subodh K. Shetye ...Plaintiff

v/s.

Prabhakar Mehta ...Defendant

...

Mr.Prashant Kulkarni for the Plaintiff.

Mr.F.D'vitre with Mr.Zal Andhyarujina i/b Maneksha & Sethana for Defendant in support.

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CORAM: D.K.DESHMUKH, J.

DATED: 29TH JUNE, 2007

P.C.:

1. This Notice of Motion is taken out by the Defendant for setting aside the decree passed against the Defendant in summary suit because the Defendant did not appear despite service of writ of summons on the Defendant.

2. The case of the Defendant is that the address as given in the cause title of the plaint of the Defendant is incorrect address, and he does not carry on his business from that address. Perusal of the affidavit of service shows that the writ of summons was served at the address of the Defendant which is disclosed in the plaint which reads as under:-

Prabhakar Mehta,
Proprietor of M/s.J & Shery
Trading Co., 32/B, Mehmood
Apartment, Opp.Siddhivinayaka Temple,
Mumbai-400 025

Perusal of the documents filed with the plaint on the basis of which the suit was filed shows that the address of the Defendant is 421, East Bay, Estate Street, App.19, Albambra CA, USA. The documents

filed with plaint do not disclose the address of the Defendant in India. Therefore, if the Plaintiff wants to sue the Defendant by giving his address in India, the Plaintiff has either to say that he found that the Defendant is carrying on business or is residing at the address which he has given in the plaint or he has to say that the Defendant himself supplied that address to the Plaintiff. In the affidavit in reply the Plaintiff says neither.

3. The learned Counsel appearing for the Plaintiff points out to me that in the reply the Plaintiff has stated that in the application given for renewal of the pass-port the Defendant has mentioned the same address which is mentioned in the cause title of the plaint.

4. The Derendant has produced his passport. Perusal of the copy of the passport of the Defendant shows that in the pass-port the address of the Defendant is thus:-

32B, Maimoon Apartment,
Palkhigulli, Prabhadevi,
Mumbai- 400 025

Thus, even one goes by the version of the Plaintiff found in the affidavit in reply the address disclosed in the pass-port of the Defendant is not the one which is shown in the cause title of the plaint. It is, thus, clear that the Plaintiff has disclosed incorrect address of the Defendant and decree came to be passed against the Defendant because the writ of summons sent on that address came back with the endorsement "unclaimed".

5. In this view of the matter, therefore, in my opinion, following order would meet ends of justice.

. Notice of Motion is granted in terms of prayer clause (d).

. The vakalatnama filed in this Notice of Motion shall be treated as vakalatnama filed in the suit.

. The Plaintiff to serve the summons for judgment on the advocate appearing for the Defendant in this Notice of Motion within a period of two weeks from today.

. Summons for judgment be placed before the

appropriate court for orders thereon.

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